



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

January 17, 2007

EXHIBIT 5
DATE 1.24.07
HB 100

Representative Bob Lake
Chairman, House Taxation Committee

Subject: HB100

Mr. Chairman:

Last Thursday, January 11, the committee heard testimony regarding HB100 which would create efficiencies in the Department's collection processes. During the hearing, Shirley Warehime, representing the Montana Certified Public Accountants Association, spoke as an opponent to this bill. Ms. Warehime's testimony expressed concern about language in New Section 2 of the bill naming officers of a corporation individually liable for the tax liabilities.

The ability to name officers or partners jointly and severally liable already exists in current withholding tax laws set forth in 15-30-203, MCA. The individual liability language the department has proposed in HB100 is not "new" language. It mirrors existing language in the individual income tax withholding provisions of 15-30-203, MCA. We have attached a copy of 15-30-203, MCA for the committee's reference.

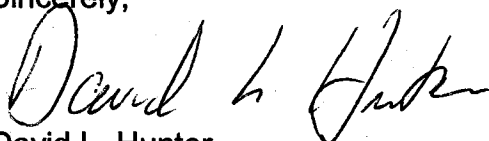
To address the individual liability concerns that were expressed by Ms. Warehime and some committee members during the hearing, the department is proposing an amendment to HB100. This amendment would remove the individual liability provisions from HB100, but would require those who fail to fulfill their statutory obligations of collecting and paying trust taxes on time, to set up a trust account in the name of the state and deposit the tax monies in the trust account. The taxes effected by HB100 are called "trust taxes" because the funds are collected by the business from a third party and are held "in trust" for the state. This amendment is modeled after existing federal legislation contained in Section 7512 of the Internal Revenue Code. Attached is a copy of our amendment language for the committee's consideration.

This is a somewhat different approach than proposed to the committee in HB74 which creates a withholding system for mineral royalties. The difference is that when royalty income is withheld from an individual that individual has a right to claim a refund or have that amount credited towards taxes owed, even if the producer never paid it to the State of Montana. The trust taxes addressed in HB100 are all transactional taxes. They do not belong to the third party who paid them and that party does not have a right to refund or credit against taxes owed. Therefore the department is willing to propose a lesser standard for the transactional taxes addressed by HB100.

If you recall, Bruce Spencer also testified at the hearing as a proponent of HB100. In his testimony he made reference to page 3, line 15 of the bill which reads; "A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant." Mr. Spencer suggested that we might want to consider changing the "90-day" provision to 120 days to be consistent with other legislative language. We reviewed Mr. Spencer's suggestion and agree with him. Return of execution language under Title 25-13-404, references 120 days. We have drafted an amendment that would change the statutory reference of "90 days" to 120 days under 15-1-706 (4). Attached is a copy of this amendment language for the committee's consideration.

We hope that the information and proposed amendments we have provide you and the other committee members will help you to successfully pass HB100.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Hunter".

David L. Hunter
Deputy Director

Enclosures: Copy of 15-30-203, MCA for the committee's reference
Copy of our amendment language referring to "trust taxes" and to change the statutory reference of "90 days" to 120 days under 15-1-706 (4)

Amendments to House Bill No. 100
1st Reading Copy

Requested by Representative Bob Bergren

For the House Taxation Committee

Prepared by Jeff Martin
January 23, 2007 (7:33am)

1. Title, page 1, line 6 through line 8.

Strike: "IMPOSING" on line 6 through "COMPANIES" on line 8

Insert: "REQUIRING A TAXPAYER TO ESTABLISH, UNDER CERTAIN
CONDITIONS, A TRUST ACCOUNT FOR THE PAYMENT OF TRUST TAXES"

2. Title, page 1, line 12.

Strike: "AND AN APPLICABILITY DATE"

3. Page 1, line 16 through page 2, line 23.

Strike: section 1 through section 3 in their entirety

Insert: "NEW SECTION. Section 1. Trust accounts for trust
taxes. (1) A person who, more than once in any 24-month

period, fails to pay any trust tax or fails to make a
deposit, payment, or return of the trust tax at the time and in
the manner prescribed by law shall collect the trust taxes that
become collectible after delivery of the notice described in
subsection (2) and shall, not later than the end of the second
banking day after any amount of the trust tax is collected,
deposit the amount in a separate trust account that is:

(a) established in a bank, as defined in 32-1-102, located
in Montana;

(b) designated as a special fund in trust for the state;
and

(c) payable to the department.

(2) The department shall deliver notice of the requirement
to deposit trust taxes in a separate trust account described in
subsection (1) in hand to the person. Delivery of notice in hand
to an officer of a corporation, a partner of a partnership, a
member or manager of a limited liability company, or the trustee
of a trust is considered notice delivered in hand to the
respective corporation, partnership, limited liability company,
and trust and to all officers of the corporation, partners of the
partnership, members and managers of the limited liability
company, trustees of the trust, and their employees.

(3) The person required to deposit trust taxes in a trust
account shall:

(a) keep the taxes in the account until payment is made to
the department; and

(b) mail a copy of the account statement to the department
at the address that the department prescribes within 2 business

days after receiving the account statement from the bank.

(4) For the purposes of this section, "trust tax" means a tax imposed in:

(a) Title 10, chapter 4, part 2, related to the basic and enhanced 9-1-1 service fees;

(b) Title 15, chapter 53, related to the retail telecommunications excise tax;

(c) Title 15, chapter 65, related to the lodging facility use tax;

(d) Title 15, chapter 68, related to sales and use taxes on accommodations, campgrounds, and rental vehicles; and

(e) Title 53, chapter 19, part 3, related to the specialized telecommunications equipment and services assessment."

Renumber: subsequent sections

4. Page 2, line 29.

Strike: the first "general fund"

Insert: "account or fund to which the debt was originally owed"

5. Page 3, line 15.

Strike: "90"

Insert: "120"

6. Page 4, line 1.

Strike: "4"

Insert: "2"

7. Page 4, line 23.

Strike: "through 4"

Insert: "and 2"

8. Page 4, line 24.

Strike: "through 4"

Insert: "and 2"

9. Page 4, line 28.

Strike: "through 3"

Insert: "and 2"

10. Page 4, line 30 through page 5, line 3.

Strike: section 9 in its entirety

- END -

15-30-203_ Employer liable for withholding taxes.txt
15-30-203. Employer liable for withholding taxes and statements.

15-30-203. Employer liable for withholding taxes and statements. (1) Each employer is liable for the payments required by 15-30-204, the amounts required to be deducted and withheld under this part, and the annual statements required by 15-30-206 and 15-30-207. The payments required by 15-30-204 and the amounts required to be deducted and withheld, plus interest due, are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing statements to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of statements and the remittance of taxes, penalties, and interest owed under this part:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(6) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer.

History: En. Sec. 4, Ch. 246, L. 1955; R.C.M. 1947, 84-4945; amd. Sec. 1, Ch. 681, L. 1979; amd. Sec. 1, Ch. 33, L. 1991; amd. Sec. 12, Ch. 491, L. 1997; amd. Sec. 4, Ch. 67, L. 2005.